

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	
	§	
<b>JULIET HOMES, LP,</b>	§	<b>Case No. 07-36424-H1-7</b>
	§	<b>(Chapter 7)</b>
<b>Debtor</b>	§	
	§	
	§	
<b>IN RE:</b>	§	
	§	
<b>JULIET GP, LLC,</b>	§	<b>Case No. 07-36426-H1-7</b>
	§	<b>(Chapter 7)</b>
<b>Debtor</b>	§	
	§	
	§	
<b>IN RE:</b>	§	
	§	
<b>DOUGLAS A. BROWN,</b>	§	<b>Case No. 07-36422-H1-7</b>
	§	<b>(Chapter 7)</b>
<b>Debtor</b>	§	
	§	

**TRUSTEES' SIXTH MOTION FOR APPROVAL OF COMPROMISE  
AND SETTLEMENT AGREEMENT BETWEEN  
TRUSTEES AND JULIAN FERTITTA**

**NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 9013(b)**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

COME NOW Joseph M. Hill, Trustee (“Juliet Trustee”) of the bankruptcy estates of Juliet Homes, LP and Juliet GP, LLC (“Juliet Debtors” or “Juliet”) and Janet S. Northrup, Trustee as Successor Trustee (“Brown Trustee”) of the bankruptcy estate of Douglas A. Brown (“Brown”), seeking approval to compromise and settle various causes of action and claims with Defendant Julian Fertitta, showing as follows:

### **I. RELIEF REQUESTED**

1. Pursuant to Federal Rule of Bankruptcy Procedure 9019, the Juliet Trustee and controversy with Julian Fertitta. While Julian Fertitta has agreed to the proposed compromise, the factual recitations set forth herein are solely those of the Trustees and are not necessarily agreed to by Fertitta.

### **II. PROCEDURAL BACKGROUND**

2. On September 20, 2007, an involuntary petition for relief was filed under Chapter 7 of the United States Bankruptcy Code against each of the Juliet Debtors. On the same date, an involuntary petition for relief was filed under Chapter 7 of the United States Bankruptcy Code against Brown.

3. On October 19, 2007, the Juliet Debtors and Brown consented to the entry of an order for relief and converted their cases to Chapter 11. On October 31, 2007, the Bankruptcy Court entered Orders for Relief in the Juliet Debtors’ and Brown’s bankruptcy cases (together, the “Bankruptcy Cases”).

4. The Juliet Trustee was subsequently appointed as Chapter 11 Trustee. At the request of the Juliet Trustee, the Juliet Debtors’ cases were converted to Chapter 7 cases.

5. On December 5, 2007, Brown moved to convert his case to Chapter 7, and on December 19, 2007, the Bankruptcy Court converted Brown's case to Chapter 7. Thereafter, the Brown Trustee was appointed Successor Trustee of Brown's Chapter 7 estate.

6. Trustees commenced multiple Adversary Proceedings based on allegations that the Juliet Debtors were engaged in a Ponzi scheme in which certain insiders, investors and/or partners received funds that Trustees are entitled to recover pursuant to federal and state law. These Adversary Proceedings include:

- Adv. No. 09-3429, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Adv. No. 09-3432, W. Steve Smith, Trustee et al. v. Douglas Allen Brown, et al.
- Adv. No. 09-3433, W. Steve Smith, Trustee et al. v. Douglas Allen Brown, et al.
- Adv. No. 09-3434, W. Steve Smith, Trustee et al. v. Douglas Allen Brown, et al.
- Adv. No. 09-3435, W. Steve Smith, Trustee et al. v. Eric Putnam, et al.
- Adv. No. 09-3436, W. Steve Smith, Trustee et al. v. Eric Putnam, et al.
- Adv. No. 09-3437, W. Steve Smith, Trustee et al. v. Eric Putnam, et al.
- Adv. No. 09-3438, W. Steve Smith, Trustee v. Lawrence H. Ramming, et al.
- Adv. No. 09-3439, W. Steve Smith, Trustee v. Lawrence H. Ramming, et al.
- Adv. No. 09-3440, W. Steve Smith, Trustee v. Lawrence H. Ramming, et al.
- Adv. No. 09-3441, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Adv. No. 09-3442, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Adv. No. 09-3443, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Civil Action No. H-12-840, Joseph M. Hill, Trustee, et al. v. Alex Oria, et al.<sup>1</sup>

(collectively, the "Adversary Proceedings"). The Adversary Proceedings were consolidated and the reference of them withdrawn to the U.S. District Court, thereby initiating Civil Action No. H-12-840, *Joseph M. Hill, Trustee, et al. v. Alex Oria, et al.*, which is pending before the Honorable Sim Lake. Reference to the "Adversary Proceedings" in this Motion includes Civil Action No. H-12-840 wherever the context requires.

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<sup>1</sup> Adv. Nos. 09-3429, 09-3432, 09-3433, 09-3434, 09-3435, 09-3436, 09-3437, 09-3438, 09-3439, 09-3440, 09-3441, and 09-3442 were consolidated into Adv. No. 09-3429. On March 12, 2012, this Court stated its intention to recommend that the reference from the District Court be withdrawn in Adv. No. 09-3429 and later issued a certification to the District Court on January 28, 2014. Civil Action No. H-12-840 is the District Court suit that resulted from the withdrawal of the reference.

7. Fertitta was named a defendant in one or more of the adversary proceedings. After mediation and Trustees' review of financial information provided, Trustees have entered into a settlement agreement with Fertitta as described more particularly below.

### **III. PROPOSED SETTLEMENT**

7. In June 2005, Julian Fertitta invested \$500,000 in the Juliet Homes business venture formed as Juliet-Reed Road, L.P. Six months later, citing "construction delays," Juliet Homes agreed to buy Fertitta's partnership interest by paying him \$1 million. Fertitta received a \$200,000 payment in late June 2006 and a second payment of \$800,000 on July 3, 2006. The Juliet-Reed Road partnership did not have any profits at the time of those payments.

8. Trustees sued Fertitta to recover the \$1 million in payments. Fertitta contested Trustees' allegations that he was a "net winner" of \$500,000 and that he had knowledge of the fraudulent scheme perpetrated by Juliet Homes. Fertitta also vigorously disputed Juliet Homes' insolvency at the time of the transfers to him.

9. Additionally, Fertitta claims that even if the Trustees prevailed in the litigation and obtained a judgment against him, he would not be able to satisfy the judgment.

10. Following protracted litigation with Fertitta and others, and after having been ordered to mediation by U.S. District Judge Sim Lake, Fertitta and the Trustees began settlement negotiations in May 2014 with the assistance of the mediator. Trustees requested and received financial information from Fertitta and, after two formal mediation sessions, continued efforts by the mediator, and evaluation of Fertitta's financial information, agreed to a settlement by which Fertitta would (i) pay \$150,000 in full satisfaction of the Trustees' claims against Fertitta and (ii) provide a release of all claims against the estates. The terms of the settlement are set forth more fully in the settlement agreement attached **Exhibit 1** and incorporated by reference as if fully set

forth herein. In summary, the settlement provides that Fertitta will pay the \$150,000 settlement amount in two installments of \$75,000. Fertitta has delivered the first installment, and the second installment is due by no later than December 8, 2014. In the event that Fertitta fails to timely make the second installment payment, Trustees may declare the settlement void. Other than the obligations contained within the settlement agreement and as detailed in the settlement agreement, the parties release each other of claims, including Fertitta's claim under 11 U.S.C. § 502(d) based upon his payment of the \$150,000 settlement amount.

11. Trustees seek approval of their compromise with Fertitta as fair and equitable to the estates and their creditors and pursuant to the factors set forth in *Protective Committee For Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968) is as follows:

(a) Probability of success in litigation, with consideration given to the uncertainty in fact and in law. The settlement with Fertitta ensures success for the Trustees. While the Trustees are confident in their claims against Fertitta, Fertitta has vigorously defended the claims based upon his alleged unawareness of any fraud in the Juliet Homes business operations and Juliet Homes' solvency at the time that Fertitta received his payments. Both sides recognize that litigating the issue of Juliet Homes' insolvency at the time of the transfers to Fertitta would involve a fact-intensive analysis about which various expert witnesses have disagreed. The settlement results in the collection of \$150,000, which was a significant factor in the Trustees' decision as set forth below.

(b) Complexity, expense and likely duration of litigation. If not for the settlement with Fertitta, this litigation would likely require more than two weeks of a jury trial and hundreds of hours of preparation as well as attendant expense for briefing, expert preparation and

testimony, and related trial expenses. The evidence presented would be complex and would likely require extensive expert testimony and supporting documentation of Juliet Homes' solvency at the points in time when Fertitta received his payments. Following the withdrawal of the reference and this Court's certification of the case as ready for trial, U.S. District Judge Sim Lake conducted a scheduling conference and ordered the parties to mediation. Judge Lake recently scheduled jury trial to commence in early January 2015. Resolution of the dispute with Fertitta, if not for the settlement, will therefore not occur until some time in 2015 and then possibly be subject to appeals following that. The settlement with Fertitta expedites the resolution of one of the biggest claims in the Adversary Proceedings and avoids the expenditure of limited estate resources for trial expenses.

(c) Other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. The settlement with Fertitta provides a certain recovery from Fertitta and payment of that \$150,000 now rather than later. If not for the settlement, Trustees risk the possibility that, following trial and any appeals, they would not prevail against Fertitta or that they would prevail in obtaining a judgment that could not be collected. Fertitta claims to be largely judgment-proof, and he provided financial documentation to Trustees in support of his position that he has limited liquid assets with which to satisfy a judgment and that his other assets are in illiquid investments of questionable value even if Trustees could access them post-judgment. Given Fertitta's apparent lack of assets to satisfy a larger judgment and the time and expense associated with a trial and possible appeal, the Trustees' considered opinion is that the \$150,000 settlement is in the best interests of the estates and their creditors.

#### IV. PRAYER

12. For all the reasons set forth above, Trustees believe that the proposed settlement agreement is in the best interests of the estates and their creditors. Trustees respectfully request that the Court grant this motion and enter an order approving the compromise. Trustees respectfully request all other relief to which they are justly entitled.

Date: November 13, 2014

Respectfully submitted,

/s/ Jeremy R. Stone

Jeremy R. Stone

Attorney-in-Charge

State Bar No. 24013577

S.D. Texas I.D. No. 27060

[jeremystone@mehaffyweber.com](mailto:jeremystone@mehaffyweber.com)

500 Dallas, Suite 1200

Houston, Texas 77002

Phone: (713) 655-1200

Fax: (713) 655-0222

ATTORNEYS FOR JOSEPH M. HILL, TRUSTEE  
and JANET S. NORTHRUP, TRUSTEE

OF COUNSEL:  
MEHAFFY WEBER, P.C.

**CERTIFICATE OF SERVICE**

I certify that on the 13<sup>h</sup> day of November, 2014, a true and correct copy of this Motion was served by first class mail or ECF on (i) the United States Trustee, (ii) the IRS, (iii) the Chapter 7 Trustees, (iv) Debtors' counsel, (v) the 20 largest unsecured creditors of each Debtor, and (vi) all persons who filed notices of appearance, all of whom are identified on the attached list. Notice of the filing of this motion was served on all creditors as set forth more fully in the Notice filed contemporaneously with this Motion.

/s/ Jeremy R. Stone

Jeremy R. Stone

**Debtors**

Douglas A. Brown  
710 Bayshore, #101  
Ft Lauderdale, FL 33304

Juliet Homes, LP  
5225 Katy Freeway, Suite 605  
Houston, Texas 77008

Juliet GP, LLC  
720 Rusk St., 2nd Floor  
Houston, TX 77002

**Debtors' Counsel**

J Craig Cowgill  
J. Craig Cowgill & Associates, P.C.  
8100 Washington, Suite 120  
Houston, TX. 77007

**Chapter 7 Trustees**

Janet S Casciato-Northrup  
Hughes Watters and Askanase  
333 Clay, 29th Floor  
Houston, TX 77002

Joseph M Hill  
Cage Hill and Niehaus LLP  
5851 San Felipe, Suite 950  
Houston, TX 77057

**U.S. Trustee**

Hector Duran  
U.S. Trustee  
515 Rusk, Ste 3516  
Houston, Texas 77002

Ellen Maresh Hickman  
Office of the U S Trustee  
515 Rusk St, Ste 3516  
Houston, TX 77002

Nancy Lynne Holley  
U S Trustee  
515 Rusk St, Ste 3516  
Houston, TX 77002

Diane G Livingstone  
Office of U S Trustee  
515 Rusk St, Ste 3516  
Houston, TX 77002

**IRS**

Internal Revenue Service  
Centralized Insolvency Operations  
PO Box 7346  
Philadelphia Pa 19101-7346



**Parties Requesting Notice (All 3 Debtors)**

Ronald J. Sommers  
Jennifer Lynn-Soon Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61<sup>st</sup> Floor  
Houston, Texas 77056

Steven A. Leyh  
Leyh & Payne, LLP  
1616 S. Voss Rd., Ste. 125  
Houston, Texas 77056

Joshua Morris Harrison  
Goodwin and Harrison  
PO Box 8278  
The Woodlands, Texas 77387-8278

Susan E. Cates  
Joshua W. Wolfshohl  
Porter & Hedges, LLP  
1000 Main St., 36<sup>th</sup> Fl.  
Houston, Texas 77002

Chuck I. Okoye  
2833 Clinton Dr.  
Houston, Texas 77020

Anthony Laurent LaPorte  
Hanszen • LaPorte  
PO Box 240353  
4309 Yoakum St.  
Houston, Texas 77277-9444

Steve Shurn  
Hughes, Watters & Askanase, LLP  
333 Clay St., 29<sup>th</sup> Floor  
Houston, Texas 77002

James Landon  
Hughes & Luce, LLP  
111 Congress, #900  
Austin, Texas 78701

Guy K. Cooksey  
Matthews, Lawson & Bowick, PLLC  
2000 Bering Dr., Ste. 700  
Houston, Texas 77057

Harris County  
c/o John P. Dillman  
PO Box 3064  
Houston, Texas 77253-3064

William S. Chesney, III  
Frank, Elmore, Lievens, Chesney &  
Turet, LLP  
808 Travis St., Ste 2600  
Houston, TX 77002

Montgomery County  
c/o John P. Dillman  
PO Box 3064  
Houston, Texas 77253-3064

Melanie D. Bragg  
Law & Mediation Offices  
4801 Woodway, Suite 320W  
Houston, Texas 77056

Q. Tate Williams  
Attorney at Law  
917 Franklin, Suite 240  
Houston, Texas 77002

J. Daniel Woodall  
Gauntt, Earl & Binney, LLP  
1400 Woodloch Forest Dr., Ste. 575  
The Woodlands, Texas 78730

Brian D. Womac  
Womac & Assoc.  
Two Memorial City Plaza  
820 Gessner, Suite 1540  
Houston, Texas 77024

Carl O. Sandin  
Perdue, Brandon, Fielder, Collins  
& Mott, LLP  
1235 North Loop West, Ste. 600  
Houston, Texas 77008

John Manicom  
12591 Research, Ste. 101  
Austin, Texas 78759

J Craig Cowgill  
J. Craig Cowgill & Associates, P.C.  
8100 Washington, Suite 120  
Houston, TX. 77007

Bennett G Fisher  
Fisher and Associates PC  
909 Fannin St, Ste 1800  
Houston, TX 77010

Blanche Duett Smith  
McFall Breitbeil & Smith  
1331 Lamar Street, Suite 1250  
Houston, TX 77010-3027

Wayne Kitchens  
Hughes Watters Askanase LLP  
333 Clay St, 29 Fl  
Houston, TX 77002

James D. Salyer  
Morris, Lendais, Hollrah & Snowden  
1980 Post Oak Boulevard, Suite 700  
Houston, Texas 77056

Timothy A. Million  
Munsch Hardt Kopf & Harr, PC  
Bank of America Center  
700 Louisiana, 46th Floor  
Houston, TX 77002

Randall A. Rios  
Munsch Hardt Kopf & Harr,  
PC Bank of America Center  
700 Louisiana, 46th Floor  
Houston, TX 77002

Geoffrey H. Bracken  
Gardere Wynne Sewell LLP  
1000 Louisiana, Suite 3400  
Houston, Texas 77002-5011

June A. Mann  
Mann & Stevens, P.C.  
550 Westcott Street, Suite 560  
Houston, Texas 77007

Ben R. King  
Ike Exezidis  
King & Exezidis, Attorneys At Law  
1631 Dunlavy  
Houston, TX 77006

Pat B. Fossett, Esq.  
614 Moray Place  
Corpus Christi, TX 78411

R. Christopher Naylor  
Kathryn L. Buza  
Devlin, Naylor & Turbyfill, P.L.L.C.  
4801 Woodway, Suite 420 West  
Houston, Texas 77056-1805

David A. McDougald  
Grosz & Associates, P.C.  
440 Louisiana St. Ste 250  
Houston, Texas 77002

Mary A. Daffin  
Barrett Burke Wilson  
Castle Daffin & Frappier, L.L.P.  
1900 St. James Place, Suite 500  
Houston, Texas 77056

John P Dillman  
Linebarger Goggan Blaire & Sampson  
1301 Travis Street, Suite 300  
Houston, TX 77002

Internal Revenue Services  
Centralized Insolvency Ops  
1919 Smith St Stop 5022 HOU  
Special Procedure  
Houston TX 77002

Dominique M. Varner  
Hughes Watters Askanase, L.L.P.  
3 Allen Center, 29th Floor 333 Clay  
Houston, TX 77002

G. James Landon  
Hughes & Luce, LLP  
111 Congress, Suite 900  
Austin, Texas 78701

HHT - FCP Limited 4, LP  
c/o Hanszen Laporte  
4309 Yoakum Blvd.  
Houston, TX 77006-5856

David Allen McDougald  
Grosz & Associates  
440 Louisiana Street, Suite 250  
Houston, Texas 77002

Michael S. Margolf  
Moss Codilis, L.L.P.  
P.O. Box 77409  
Ewing, NJ 08618

**20 Largest Unsecured Creditors  
(Douglas A. Brown)**

5803 Richmond, Ltd.  
c/o Jennifer L. Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

6409 Interests, Ltd. dba 802 Interests, Ltd.  
c/o Jennifer L. Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

6353 Interests, Ltd.  
c/o Jennifer L. Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

Karalynn Cromeens  
1413 Brittmore Road  
Houston TX 77043

Cenlar  
Attn: Bankruptcy Department  
P.O. Box 77409  
Ewing, NJ 08618

HHT (1998) Limited  
3010 Palmer Way  
The Woodlands, Texas 77380

Timothy Delgado  
Arnold & Itkin, LLP  
1401 McKinney St., Ste 2550  
Houston, TX 77010

Spectrum LLP  
PO Box 3011  
Spring, TX 77373-3011

Vincent Galeoto  
8134 Sun Terrace Lane  
Houston, TX 77095

Meinen Family Partnership  
3227 Wild River Dr  
Richmond TX 77469-8299

Raj Rangwani  
3934 FM 1960 Rd W Ste 210  
Houston TX 77068-3544

SER Construction Partners, Ltd.  
c/o Meyer, Knight & Williams, L.L.P.  
8100 Washington Avenue, Suite 1000  
Houston, Texas 77007

LeAnn Kenney  
3422 Creekstone  
Sugar Land TX 77479-2418

Melisa Thomas  
c/o Nichamoff & King, P.C.  
6565 West Loop South, Suite 501  
Bellaire, TX 77401

FCP (1998) Limited  
126 Tranquil Park  
The Woodlands, TX 77380

Thompson & Knight LLP  
333 Clay Street, Suite 3300  
Houston, TX 77002

Najmuddin Karimjee, M.D.  
and SAIFI, L.L.C.  
14511 Linscomb Drive  
Houston, TX 77084

U.S. Bank N.A.  
Bankruptcy Department  
P.O. Box 5229  
Cincinnati, OH 45201

Advanced Appliances  
2101 N Main St  
Pearland, TX 77581-3309

Chase Auto Finance  
PO Box 901032  
Ft. Worth, TX 76101-2032

**20 Largest Unsecured Creditors  
(Juliet Homes, LP)**

5803 Richmond, Ltd.  
c/o Jennifer L. Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

Almeda/Reed Interests, Ltd.  
c/o Jennifer L. Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

6353 Interests, Ltd.  
c/o Jennifer L. Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

TMCM Real Properties, LLC  
(Tullis Thomas)  
Tullis Thomas  
3109 Nantucket Ct.  
Pearland, TX 77584

Thu Binh Si Ho  
ATTN: Tri Nguyen  
9440 Bellaire Blvd, Suite 216  
Houston, TX 77036

Bruce A Nickel  
P.O. Box 396  
Barker TX 77413

Michael Schnakenberg  
15 Greenlaw Ct  
Sugar Land TX 77479

FCP (1998) Limited  
126 Tranquil Park  
The Woodlands, Texas 77380

HHT (1998) Limited  
3010 Palmer Way  
Houston, TX 77380

Dave Perkins  
c/o Marjorie Payne Britt  
Britt & Catrett, PC  
4615 S. W. Fwy., Suite 500  
Houston, TX 77027

Najmuddin Karimjee, M.D. and SAIFI, LLC  
14511 Linscomb Drive  
Houston, TX 77084

Spectrum L.L.P  
Po Box 3011  
Spring, TX 77373

LH Ramming, Trustee  
50 Briar Hollow Lane  
Suite 210- East Bldg.  
Houston, TX 77027

Arcoa Capital Partners  
Larry Ramming, Trustee  
50 Briar Hollow Lane  
Suite 210- East Bldg.  
Houston, TX 77027

Arcoa Funding LLC  
50 Briarhollow Suite 210 East  
Houston, TX 77027-9300

Thu-Binh Si Ho & Hue Phu Ho  
1625 Kirby  
Houston, TX 77019

Bruce A Nickel  
P.O. Box 396  
Barker TX 77413

Joon Rhee  
5114 Lillian St.  
Houston, TX 77007

Muduganti J. Reddy  
c/o Warren King  
5020 Montrose, Third Floor  
Houston, TX 77006

Meinen Family Partnership  
3227 Wild River  
Richmond, TX 77469

Michael Schnakenberg  
15 Greenlaw Court  
Sugar Land, TX 77479

SER Construction Partners, Inc.  
P.O. Box 891145  
Houston, TX 77289

Suarez Construction Group, LLC  
505 N. Sam Houston Pkwy E. #265  
Houston, TX 77060

**20 Largest Unsecured Creditors  
(Juliet GP, LLC)**

Almeda/Reed Interests, Ltd.  
c/o Jennifer L. Haluptzok  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

6353 Interests, Ltd.  
c/o Jennifer L. Haluptzok  
Nathan Sommers Jacobs  
2800 Post Oak Blvd., 61st Floor  
Houston, TX 77056

HHT (1998) Limited  
3010 Palmer Way  
The Woodlands, Texas 77380

Najmuddin Karimjee, M.D. and SAIFI, LLC  
14511 Linscomb Drive  
Houston, TX 77084

Vincent Galeoto  
8134 Sun Terrace Lane  
Houston, TX 77095

FCP (1998) Limited  
126 Tranquil Park  
The Woodlands, Texas 77380

5803 Richmond LTD  
c/o Andrew McCormick  
5909 West Loop S Ste 550  
Bellaire, TX 77401-2402

Dr. Cliff Atwood  
3027 Poe Dr.  
Montgomery, TX 7356-5543

Jeanette Kew  
PO Box 525212  
Flushing, NY 11352-5212

Flooring Services of Texas LP  
c/o Susan E. Cates  
1000 Main St. 36<sup>th</sup> FL  
Houston, TX 77002-6336

Raj Rangwani  
3934 FM 1960 Rd W Ste 210  
Houston, TX 77068-3544

Robert Davis  
c/o Raul Suazo  
808 Travis St Ste 1800  
Houston, TX 77002-5718

SER Construction Partners, Ltd.  
c/o Nathan A. Steadman  
8100 Washington Ave Ste 100  
Houston, TX 77007-1062

Turnkey Concrete  
2718 Colony Park Drive  
Sugarland, TX 77479

Cornerstone Electric Company  
1047 E. Hufsmith Rd.  
Tomball, TX 77375

J & LA Plumbing Co.  
6832 Lindbergh St.  
Houston, TX 77087

First Horizon Construction Lending  
Construction Loan Admin.  
1250 Wood Branch Park Dr., Suite 600-CC  
#7546  
Houston, TX 77079

Entergy  
PO Box 8104  
Baton rouge, LA 70891-8104

Sutherland Asbill & Brennan, LLP  
1275 Pennsylvania Ave., NW  
Washington, DC 20004-2415

Texas Drywall  
1505 Aldine Bender  
Houston, TX 77032